



2016-034

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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May 11, 2016

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Honorable John Koniar
Mayor, City of Foley
Post Office Box 1750
Foley, Alabama 36536

Municipalities – Mayors – Planning
Commissions – Appointments – Officers
and Employees – Residence Requirements
– Baldwin County

The term “administrative officials of the municipality,” as used in section 11-52-3(a) of the Code of Alabama, may include employees who oversee a key municipal function or area but who do not supervise other people.

Foley Planning Commission members are not required to be residents of the City of Foley.

Dear Mayor Koniar:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Foley.

QUESTION

(1) Does the term “administrative officials of the municipality” in section 11-52-3(a) of the Code of Alabama encompass employees who oversee a key municipal function or area but who do not supervise other people?

FACTS AND ANALYSIS

Section 11-52-3(a) of the Code of Alabama provides that municipal planning commissions shall consist of nine members to include the mayor, one of the “administrative officials of the municipality,” a member of the council to be selected by it as a member ex officio, and six persons who shall be appointed by the mayor. ALA. CODE § 11-52-3(a) (2008). You question who may qualify as an administrative official of the municipality.

You provide the following examples of employees of the City of Foley who oversee key municipal functions but do not supervise others: A fire inspector who oversees the city’s fire inspection program, a Geographical Information Systems (GIS) Coordinator who oversees the Foley GIS system and applications, an assistant city engineer, and other employees.

In two previous opinions, this Office has defined the term “administrative official” under the statute by examining the commonly accepted definitions for the terms “administrative” and “administrative officer.” Opinions to Honorable Milton E. Barker, Jr., Attorney, City of Clay, dated April 6, 2005, A.G. No. 2005-101; Honorable Robert P. Reynolds, Attorney, City of Northport, dated July 15, 1985, A.G. No. 85-00438. These opinions determined that an administrative official is an officer who manages, directs or superintends the workings of “persons *or things*.” *Id.* at 2 (emphasis added).

Although the *Reynolds* and *Barker* opinions concluded certain persons were not administrative officials, the opinions did not turn on whether the persons supervised other people. The *Reynolds* opinion concerned a fireman who was represented to serve in a nonadministrative capacity. The *Barker* opinion found that a council member may not fill the position of administrative official because the position is limited to executive, not legislative, officials. Because an “administrative official” may manage things as opposed to people, an employee who merely runs city programs or important functions may serve as the administrative official on the Foley Planning Commission.

CONCLUSION

The term “administrative officials of the municipality,” as used in section 11-52-3(a) of the Code of Alabama, may include employees who oversee a key municipal function or area but who do not supervise other people.

QUESTION

(2) Are all Foley Planning Commission members required to be residents of the City of Foley?

FACTS AND ANALYSIS

The City of Foley is a class 8 municipality and has a citizenry of roughly 7600 people. Section 11-52-3(b) of the Code of Alabama sets out the residency requirements for someone appointed to a planning commission. This provision states as follows:

(b) All members of the commission shall serve without compensation, and the appointed members shall hold no other municipal office, except, that one of the appointed members may be a member of the zoning board of adjustment or appeals, except *in all cities having populations of not less than 175,000 nor more than 275,000*, according to the most recent federal decennial census, wherein no member of the commission may be a member of the zoning board of adjustment or appeals and wherein *all members of the commission shall be bona fide residents and qualified electors of such cities*

ALA. CODE § 11-52-3(b) (2008) (emphasis added).

Because the city has a population of less than 175,000, the residency requirements set forth in section 11-52-3(b) are not applicable to the city. Accordingly, it is the opinion of this Office that the city may appoint individuals residing outside the corporate limits and police jurisdiction as members of the Foley Planning Commission.

CONCLUSION

Foley Planning Commission members are not required to be residents of the City of Foley.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in dark ink, appearing to read "G. Ward Beeson, III". The signature is fluid and cursive, with the last name "Beeson" being more prominent.

G. WARD BEESON, III
Chief, Opinions Section

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